

Chapter 6. ENVIRONMENTAL PROTECTION

6.1 Purpose and Intent

A primary and fundamental element of this Ordinance is the protection of our existing environmental resources including floodplains and other stream corridors, wetlands, watersheds and groundwater recharge areas, soils, forest stands, specimen trees and other significant vegetation and wildlife. These elements are of economic value to the City and make it a desirable place to live and visit.

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6.2 Demolition Landfill Development

Areas that have been used for the disposal of solid waste shall not be subdivided into commercial or residential building sites. This includes areas that have been used for the disposal of trash, demolition waste, construction debris, stumps, and other waste materials.

6.3 Sedimentation and Erosion Control

In order to prevent soil erosion and sedimentation pollution, the developer shall comply with all requirements of the North Carolina Sedimentation Pollution Control Act of 1973, as amended.

A Sedimentation and Erosion Control Plan approved by Rowan County Environmental Services (or other agencies having jurisdiction) shall be in place prior to any land disturbing activity.

6.4 Pre-Development Site Grading

Predevelopment site grading may commence only with a permit issued in accordance with the provisions of Section 15.5. Predevelopment site grading, for the purpose of this Ordinance, is any land disturbing activity of one acre or more that is not regulated by a previously-approved site plan.

The grading may be considered a “low impact” or “high impact” activity based on the table below. If one or more of the high impact activities exist, it is considered high impact.

Low Impact Activity	High Impact Activity
1. Land disturbing activity is more than 100 feet from a residential district.	1. Land disturbing activity is 100 feet or less from a residential district.
2. Land disturbing activity will not intrude into either the Street Yard landscaping area or Planting Yard landscaping area (<i>see Chapter 8, Landscaping</i>)	2. Land disturbing activity will intrude into either the Street Yard area or the Planting Yard landscaping area (<i>see Chapter 8, Landscaping</i>)
3. The steepness of the proposed slope at clearing limit is 3:1 (horizontal:vertical) or flatter	3. The steepness of the proposed slope at clearing limit is greater (steeper) than 3:1 (horizontal:vertical)
4. The height of proposed grade change (cut or fill) is less than or equal to 3 feet.	4. The height of the proposed grade change is greater than 3 feet.

6.5 Flood Damage Protection Ordinance

A. Statutory Authorization

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

B. Findings of Fact

1. The flood prone areas within the jurisdiction of The City of Salisbury are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. Those flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

C. Statement of Purpose

It is the purpose of this section to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas and provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities;

2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging, and all other development which may increase erosion or flood damage; and,
5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

D. Objectives

The objectives of this Ordinance are:

1. to protect human life and health;
2. to minimize expenditure of public money for costly flood control projects;
3. to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. to minimize prolonged business losses and interruptions;
5. to minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
6. to help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and,
7. to insure that potential homebuyers are notified that property is in a Special Flood Hazard Area.

E. Definitions

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the floodplain administrator's interpretation of any provision of this Ordinance.

“Area of Shallow Flooding” means a designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination as published in the Flood Insurance Study of the water surface elevations of the base flood.

“Building” see “Structure”

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” defined as in NCGS 130A-290(a)(6).

“Elevated Building” means a non-basement building which has its reference level raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is pre-FIRM.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and,
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Floodplain” or “Flood Prone Area” means any land area susceptible to being inundated by water from any source.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Regulations” means this Ordinance and other zoning Ordinances, subdivision regulations, building codes, health regulations, special purpose Ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

“Flood Prone Area” see “Floodplain”

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floor” see “Lowest Floor”

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

“Historic Structure” means any structure that is:
listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; individually listed on a State inventory of historic places; individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified:

- (1) by an approved state program as determined by the Secretary of Interior, or
- (2) directly by the Secretary of Interior in states without approved programs.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk, patio slab, or deck support immediately next to the building after completion of the building. For Zone A and AO, use the natural grade elevation prior to construction.

“Lowest Floor” means the subfloor, top of slab or grade of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Market Value” means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values.

“Mean Sea Level” means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the original version of this Ordinance and includes any subsequent improvements to such structures.

“Nonconforming Building or Development” means any legally existing building or development which fails to comply with the current provisions of this Ordinance.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Obstruction” includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

“Post-FIRM” means construction or other development which started on or after January 1, 1975 or on or after the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.

“Pre-FIRM” means construction or other development which started before January 1, 1975 or before the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) designed to be self-propelled or permanently tow able by a light duty truck;
- and,
- (4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Reference Level” is the portion of a structure or other development that shall be compared to the regulatory flood protection elevation to determine regulatory compliance of such building. Within Special Flood Hazard Areas designated as zones A1-A30, AE, A, A99, AO, or AH, the reference level is the top of the lowest floor.

“Regulatory Flood Protection Elevation” means the elevation to which all structures and other development located within the Special Flood Hazard Areas shall be elevated or floodproofed, if non-residential. Within areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE *plus one (1) foot of freeboard*. In areas where no BFE has been established, all structures and other development shall be elevated or floodproofed, if non-residential, to two (2) feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State or Community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the Ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Repetitive Loss” means flood-related damages sustained by a structure on two (2) separate occasions during any 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent (25%) of the market value of the structure before the damage occurred.

“Retrofitting” means measures, such as floodproofing, elevation, construction of small levees, and other modifications, taken on an existing building or its yard to protect it from flood damage.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means property used for the storage, collection, and/or recycling of any type of equipment whatsoever, whether industrial or noncommercial, and including but not limited to vehicles, appliances and related machinery.

“Special Flood Hazard Area (SFHA)” is the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 6.5.F of this Ordinance.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” defined as in NCGS 130A-290(a)(36).

“Start of Construction” includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, a gas or liquid storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”.

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one year period whereby the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (1) any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community

code enforcement official and which are the minimum necessary to assure safe living conditions; or,

- (2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Variance" is a grant of relief from the requirements of this Ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 6.5.F.4 and 5 is presumed to be in violation until such time as that documentation is provided.

"Watercourse" means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

"Water Surface Elevation (WSE)" means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

F. General Provisions

1. Applicable Lands

This section shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJ) if applicable, of the City of Salisbury and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

2. Basis for Establishing the Special Flood Hazard Areas (or Base Flood Elevations – BFE s)

Special Flood Hazard Areas are those identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM), for Rowan County dated November 1, 1979 and May 15, 1980, which with accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this section. The Special Flood Hazard Areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to, detailed flood data:

- a. Generated as a requirement of Chapter 16 of this Ordinance;
- b. Preliminary FIRMs where more stringent than effective FIRM; or,

- c. **Post-disaster Flood Recovery Maps:** In addition, upon the annexation to the City of Salisbury or inclusion in the Extraterritorial Jurisdiction (ETJ), the Special Flood Hazard Areas identified by the Federal Emergency Management Agency (FEMA) and/or produced under the Cooperating Technical State Agreement between the State of North Carolina and FEMA as stated above for the Unincorporated Areas of Rowan County, with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and are declared to be a part of this Ordinance.

3. Establishment of a Development Permit

A Floodplain Development Permit shall be required in conformance with the provisions of this section prior to the commencement of any development activities within the Special Flood Hazard Areas as determined in Section 6.5.F.

4. Compliance

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this section and other applicable regulations.

5. Interpretation

In the interpretation and application of this Section, all provisions shall be:

- a. Considered as minimum requirements;
- b. Liberally construed in favor of the governing body; and,
- c. Deemed neither to limit nor repeal any other powers granted under NC statutes.

6. Warning and Disclaimer of Liability

The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Actual flood heights may be increased by man-made or natural causes. This section does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the City of Salisbury or by any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decision lawfully made hereunder.

G. Provisions for Flood Hazard Reduction

1. General Standards

In all Special Flood Hazard Areas, the following provisions are required:

- a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- b. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- c. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- d. Electrical heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches.
- e. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- f. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- g. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- h. Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this section, shall meet the requirements of “new construction” as contained in this section.
- i. Non-conforming structures or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this section. Provided, however, nothing in this section shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this Ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this section.
- j. New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Areas. A structure or tank for

chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or flood-proofed to at least the regulatory flood protection elevation and certified according to Section 16.3 of this Ordinance.

2. Specific Standards

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 6.5.F.2, the following provisions are required:

- a. Residential Construction:** New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation.
- b. Non-Residential Construction:** New construction or substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation. Structures located in A, AO, AE and A1-30 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Administrator as set forth in Section 16.3.
- c. Manufactured Homes:**
 - (1)** New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation.
 - (2)** Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to NCGS §143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

- (3) All foundation enclosures or skirting shall be in accordance with Section 6.5.G.2.d, below.
- (4) An evacuation plan shall be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Administrator and the local Emergency Management coordinator.

d. Elevated Buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas that are below the regulatory flood protection elevation shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises, be constructed entirely of flood resistant materials below the regulatory flood protection level in A, AO, AE, and A1-30 zones and meet the following design criteria:

- (1) Measures for complying with this requirement shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. To meet this requirement, the foundation shall either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - i) Provide a minimum of two openings on different sides of each enclosed area subject to flooding;
 - ii) The total net area of all openings shall be at least one (1) square inch for each square foot of each enclosed area subject to flooding;
 - iii) If a building has more than one enclosed area, each area shall have openings on exterior walls to allow floodwater to directly enter;
 - iv) The bottom of all required openings shall be no higher than two (2) foot above the adjacent grade; and,
 - v) Openings may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - vi) Foundation Enclosures:
 - (a) Vinyl or sheet metal skirting is not considered an enclosure for regulator and flood insurance rating purposes. Therefore, such skirting does not require hydrostatic openings as outlined above.
 - (b) Masonry or wood underpinning, regardless of structural status, is considered an enclosure and

requires hydrostatic openings as outlined above to comply with this section.

- (2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
- (3) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

e. Additions/Improvements:

- (1) Additions and/or improvements to pre-FIRM structures where the addition and/or improvements in combination with any interior modifications to the existing structure are not a substantial improvement, shall be designed to minimize flood damages and shall not be any more non-conforming than the existing structure.
- (2) Additions and/or improvements to pre-FIRM structures where the addition and/or improvement are a substantial improvement, the existing structure and the addition and/or improvements shall comply with the standards for new construction.
- (3) Additions to post-FIRM structures with no modifications to the existing structure shall require only the addition to comply with the standards for new construction.
- (4) Additions and/or improvements to post-FIRM structures where the addition and/or improvements in combination with any interior modifications to the existing structure:
 - i) Are not a substantial improvement, the addition and/or improvements only shall comply with the standards for new construction.
 - ii) Are a substantial improvement, both the existing structure and the addition and/or improvements shall comply with the standards for new construction.
- (5) Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

f. Recreational Vehicles: Recreation vehicles placed on sites within a Special Flood Hazard Area shall either:

- (1) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached

to the site only by quick disconnect type utilities and has no permanently attached additions); or,

- (2) Meet all the requirements for new construction.

g. Temporary Structures:

- (1) Applicants shall submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan shall include the following information:
 - i) A specified time period for which the temporary use will be permitted;
 - ii) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - iii) The time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - iv) A copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and,
 - v) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.
- (2) The above information shall be submitted in writing to the Administrator for review and written approval.

h. Accessory Structures: When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (1) Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);
- (2) Accessory structures shall be designed to have low flood damage potential;
- (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (4) Accessory structures shall be firmly anchored in accordance with Section 6.5.G.1.a.
- (5) All service facilities such as electrical and heating equipment shall be installed in accordance with Section 6.5.G.1.d; and,

- (6) Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with Section 6.5.G.2.d.
- (7) An accessory structure with a footprint less than 150 square feet does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 6.5.M.

H. Standards for Subdivisions, Manufactured Home Parks, and Major Developments

All subdivision, manufactured home park, and major development proposals located within the Special Flood Hazard Areas shall:

- 1. Be consistent with the need to minimize flood damage;
- 2. Have public utilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- 3. Have adequate drainage provided to reduce exposure to flood hazards; and,
- 4. Have Base Flood Elevation (BFE) data provided development is greater than the lesser of five (5) acres or fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Section 6.5.F.2.

I. Standards for Floodplains without Established Base Flood Elevations

Within the Special Flood Hazard Areas established in Section 6.5.F.2, where no Base Flood Elevation (BFE) data has been provided, the following provisions shall apply:

- 1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty feet each side from top of bank or five times the width of the stream whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- 2. If Section 6.5.G.1 is satisfied and Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this section and shall be elevated or floodproofed in accordance with elevations established in accordance with floodway data, and/or non-encroachment area data available from Federal, State, or other sources. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source, the reference level, including basement, shall be elevated at least 3 feet above the highest adjacent grade.

J. Standards for Floodplains with BFE but without Established Floodways or Non-Encroachment Areas

Along rivers and streams where Base Flood Elevation (BFE) data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

K. Floodways and Non-Encroachment Areas

Located within the Special Flood Hazard Areas established in Section 6.5.F.2 are areas designated as floodways or non-encroachment areas. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions shall apply to all development within such areas:

1. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the floodplain administrator prior to issuance of floodplain development permit.
2. If Section 6.5.G.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this section.
3. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision provided the following provisions are met:
 - a. The anchoring elevation standards of 6.5.G.2 and,
 - b. The no encroachment standards of Section 6.5.I.1 are met.

L. Standards for Areas of Shallow Flooding (AO Zones)

Located within the Special Flood Hazard Areas established in 6.5.F.2, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions shall apply within such areas:

1. All new construction and substantial improvements of all structures shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, above the highest adjacent

grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least to the regulatory flood protection elevation as defined for the Special Flood Hazard Areas where no BFE has been established.

2. All new construction and substantial improvements of non-residential structures shall have the option to, in lieu of elevation, be completely floodproofed together with attendant utilities and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as per Section 16.3.

M. Administration

1. Designation of Floodplain Administrator

The City Engineer or his designee, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this Ordinance.

2. Floodplain Development Permit and Certification Requirements

- a. **Plans and Application Requirements.** Application for a Floodplain Development Permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit:
 - (1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
 - ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 6.5.F.2 or a statement that the entire lot is within the Special Flood Hazard Area;
 - iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 6.5.F.2;
 - iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Section 6.5.F.2;

- v) the Base Flood Elevation (BFE) where provided as set forth in Section 6.5.F.2; Sections 6.5.M.3.k and l; or Sections 6.5.I, J, and G.2.e;
 - vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development;
 - vii) preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.
- (2) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - ii) Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
 - iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
- (3) If floodproofing, a floodproofing certificate and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in Sections 6.5.G.2.b and 6.5.I.2.
- (4) A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this Ordinance are met. These details include but are not limited to:
 - i) Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);
 - ii) Should solid foundation perimeter walls be used in floodplains, details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with Section 6.5.G.2.d;
- (5) Usage details of any enclosed space below the regulatory flood protection elevation.
- (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (7) If floodplain development permit is issued for placement of Recreational Vehicles and/or Temporary Structures, documentation to ensure Sections 6.5.G.2.f and g of this code are met.

- (8) If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

b. Floodplain Development Permit Data Requirements. The following information shall be provided at a minimum on the Floodplain Development Permit to ensure compliance with this code:

- (1) A description of the development to be permitted under the floodplain development permit issuance.
- (2) The Special Flood Hazard Area determination for the proposed development per available data specified in Section 6.5.F.2.
- (3) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (4) The regulatory flood protection elevation required for the protection of all public utilities.
- (5) All certification submittal requirements with timelines.
- (6) State that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, if applicable.
- (7) If in an A, AO, AE or A1-30 zone, specify the minimum foundation opening requirements.
- (8) State limitations of below BFE enclosure uses (if applicable). (i.e., Parking, Building Access and Limited Storage only).

c. Certification Requirements:

- (1) An Elevation Certificate (FEMA Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required after the reference level is completed. Within twenty-one (21) calendar days of establishment of the reference level elevation, or floodproofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, or floodproofed elevation, whichever is applicable in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar period and

prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make said corrections required shall be cause to issue a stop-work order for the project.

- (2) A Final As-Built Elevation Certificate (*FEMA Form 81-31*) or Floodproofing Certificate (*FEMA Form 81-65*) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation or floodproofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (3) If a manufactured home is placed within an A, AO, AE, or A1-30 zone and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per Section 6.5.G.2.c.
- (4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (5) Certification Exemptions. The following structures, if located within A, AO, AE or A1-30 zones, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) above:
 - i) Recreational Vehicles meeting requirements of Section 6.5.G.2.f.1;

- ii) Temporary Structures meeting requirements of Section 6.5.G.2.g; and
- iii) Accessory Structures less than 150 square feet meeting requirements of Section 6.5.G.2.h.

3. Duties and Responsibilities of the Floodplain Administrator

Duties of the floodplain administrator shall include, but not be limited to:

- a. Review all floodplain development applications and issue permits for all proposed development with in flood prone areas to assure that the requirements of this Ordinance have been satisfied.
- b. Advise permittee that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
- c. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- d. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- e. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 6.5.I are met.
- f. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with Section 6.5.M.2.c.
- g. Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with Section 6.5.M.2.c.
- h. Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with Section 6.5.M.2.c.
- i. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 6.5.M.2.c and Section 6.5.G.2.b.
- j. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make

the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this section

- k. When Base Flood Elevation (BFE) data has not been provided in accordance with Section 6.5.F.2 obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section 6.5.I, in order to administer the provisions of this Ordinance.
- l. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section 6.5.F.2, obtain, review, and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this Ordinance.
- m. When the exact location of boundaries of the Special Flood Hazard Areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. A copy of the Letter of Map Amendment issued from FEMA will be maintained by the floodplain administrator in the floodplain development permit file.
- n. Permanently maintain all records that pertain to the administration of this Ordinance and make these records available for public inspection.
- o. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local Ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- p. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- q. Revocation of floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or

specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

- r. Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- s. Follow through with corrective procedures of Section 6.5.M.4, below.

4. Corrective Procedures

- a. **Violations to be Corrected:** When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.
- b. **Actions in Event of Failure to Take Corrective Action.** If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (1) that the building or property is in violation of the Flood Damage Prevention Ordinance;
 - (2) that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
 - (3) that following the hearing, the floodplain administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- c. **Order to Take Corrective Action:** If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days. Where the floodplain administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

- d. **Appeal:** Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- e. **Failure to Comply with Order:** If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

5. Variance Procedures

- a. The Zoning Board of Adjustment as established by the City of Salisbury, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this Ordinance.
- b. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- c. Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- d. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Ordinance, and:
 - (1) the danger that materials may be swept onto other lands to the injury of others;
 - (2) the danger to life and property due to flooding or erosion damage;
 - (3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) the importance of the services provided by the proposed facility to the community;
 - (5) the necessity to the facility of a waterfront location, where applicable;
 - (6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

- (7) the compatibility of the proposed use with existing and anticipated development;
 - (8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - (11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- e. A written report addressing each of the above factors shall be submitted with the application for a variance.
- f. Upon consideration of the factors listed above and the purposes of this Ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance.
- g. Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.
- h. **Conditions for Variances:**
- (1) Variances may not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or Ordinances.
 - (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (3) Variances shall only be issued upon:
 - i) a showing of good and sufficient cause;
 - ii) a determination that failure to grant the variance would result in exceptional hardship; and
 - iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.

- (4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
- (5) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- i. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met. A Floodplain Development permit may be issued for such development only if a variance is granted.

 - (1) The use serves a critical need in the community.
 - (2) No feasible location exists for the use outside the Special Flood Hazard Area.
 - (3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection level.
 - (4) *The* use complies with all other applicable federal, state and local laws.
 - (5) The City of Salisbury has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) days prior to granting the variance.

6.6 Watershed Protection Ordinance

A. General Provisions

1. Authority

The Legislature of the State of North Carolina has, in Chapter 160A, Article Section 174, General Code Authority; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The City Council of Salisbury enacted into law the following sections as the Watershed Protection Code of the City of Salisbury as adopted on June 22, 1972.

2. Jurisdiction and Coordination with Other Codes

The provisions of this Chapter shall apply only to those lands within the City of Salisbury corporate boundaries and extraterritorial jurisdictional limits that have been designated as a Public Water Supply Watershed by the NC Environmental Management Commission. These areas are identified by the overlay districts as established on the City of Salisbury's Watershed Overlay District:

- Watershed Protection Overlay (WPO)

The requirements stated in this Chapter shall supersede all other applicable codes enumerated in this Ordinance, unless otherwise provided.

3. Rules Governing the Interpretation of Watershed Area Boundaries

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

- a. Area boundaries approximately following street, alley, railroad or highway lines or centerlines thereof shall be construed to be these boundaries.
- b. Area boundaries approximately following lot lines, such lot lines shall be construed to be these boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted confirming that properties along these boundaries do not lie within the watershed area.
- c. The watershed area boundaries shall be determined by using the scale on the map where the boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line.
- d. The location of the watershed area boundaries shall be construed to be the lot line where the boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line.
- e. The Administrator shall interpret the Watershed Map where other uncertainties exist; however, this decision may be appealed to the Planning Board.

4. Exceptions to Applicability

- a. These regulations are not intended to interfere with any easement, covenants or other agreements. However, if these provisions impose greater restrictions or higher standards than the provisions of these regulations shall control.
- b. Existing development, as defined in this Ordinance, is not subject to the requirements of this Section. Expansions to structures classified as existing development shall meet the requirements of this Section; however, the built-upon area of the existing development is not required to be included in the density calculations.

- c. **Uses of Land.** This category consists of uses existing at the time of adoption of this Ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

 - (1) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - (2) Such use of land shall be changed only to an allowed use.
 - (3) When such use ceases for a period of at least one year, it shall not be reestablished.
- d. **Reconstruction of Buildings or Built-upon Areas.** Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:

 - (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
 - (2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

5. Application of Regulations

- a. No building or land shall be used and no development shall take place except to conform to these regulations specified for the watershed area in which it is located.
- b. No area required for the purpose of complying with the provisions of this Section shall be included in the area required for another building.
- c. A use or class not specifically indicated as being allowed in a watershed area is prohibited.
- d. Total project area shall include total acreage in the tract on which the project is to be developed when calculating built-upon area.

6. Watershed Protection Permit

- a. Zoning compliance shall constitute the issuance of a Watershed Protection Permit. No Watershed Protection Permit shall be issued except in conformity with the provisions of this Section.
- b. All Permit applications, with supporting documentation, shall include all applicable Watershed-related information including total area, existing built-upon area, proposed built-upon area, and related calculations.

- c. A Watershed Permit shall expire if a Building Permit or Watershed Occupancy Permit is not obtained by the applicant within twelve (12) months from the date of issuance.

7. Building Permit Required

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has been issued.

8. Watershed Protection Occupancy Permit

- a. The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.
- b. A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.
- c. When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met coincident with the Watershed Protection Permit.
- d. If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.
- e. No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

B. Definitions

"Agricultural Use" means the use of waters for stock watering, irrigation, and other farm purposes.

"Best Management Practices (BMP)" means a structural or nonstructural management-based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

"Buffer" means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

"Building" means any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

"Built-upon area" means built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

"Cluster Development" means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments. For the purpose of this Ordinance, planned unit developments and mixed use development are considered as cluster development.

"Critical Area" means the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

"Customary Home Occupations" means any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over twenty-five percent (25%) of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

"Development" means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

"Dwelling Unit" means a building, or portion thereof, providing complete and permanent living facilities for one family.

"Existing Development" means those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:

- (1) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2) having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1), or
- (3) having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1).

"Existing Lot (Lot of Record)" means a lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

"Family" means one or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

"Family Subdivision" means a division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

"Industrial Development" means any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

"Landfill" means a facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this Ordinance this term does not include composting facilities.

"Lot" means a parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

"Major Variance" means a variance from the minimum statewide watershed protection rules that results in any one or more of the following:

- (1) the relaxation, by a factor greater than ten (10) percent, of any management requirement under the low density option;
- (2) the relaxation, by a factor greater than five (5) percent, of any buffer, density or built-upon area requirement under the high density option;
- (3) any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

"Minor Variance" means a variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five (5) percent of

any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low density option.

"Nonconforming Lot of Record" means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

"Non-residential Development" means all development other than residential development, agriculture and silviculture.

"Plat" means a map or plan of a parcel of land which is to be, or has been subdivided.

"Protected Area" means the area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

"Residential Development" means buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

"Residuals" means any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

"Single Family Residential" means any development where: 1) no building contains more than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit.

"Street (Road)" means a right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

"Structure" means anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

"Subdivider" means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

"Subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Ordinance:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the this Ordinance;
- (5) The division of a tract into plots or lots used as a cemetery.

"Toxic Substance" means any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

"Variance" means a permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this Ordinance.

"Water Dependent Structure" means any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

"Watershed" means the entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

"Watershed Administrator" means an official or designated person of Salisbury responsible for administration and enforcement of this Ordinance.

C. Subdivision Regulations

1. General Provisions

- a. No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this section. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this Section.
- b. The approval of a plat does not constitute or effect the acceptance by the City of Salisbury or the public of the dedication of any street or other

ground, easement, right-of-way, public utility line, or other public facility shown on the plat and shall not be construed to do so.

- c. All subdivisions shall conform to the mapping requirements contained in G.S.47-30.
- d. All subdivisions of land within the jurisdiction of City of Salisbury after the effective date of this Ordinance shall require a plat to be prepared, approved, and recorded pursuant to this Ordinance.

2. Subdivision Application and Review Procedures

- a. All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated Public Water Supply Watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this Ordinance and may be recorded provided the Watershed Administrator initials the vicinity map. In addition, subdivisions within a WS-IV watershed are subject to the provisions of this Ordinance only when an erosion and sedimentation plan is required under the provisions of State law, or approved local program. Subdivisions within the designated watershed area shall comply with the provisions of this Section and all other state and local requirements that may apply.
- b. Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, two (2) copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board.
- c. The Watershed Administrator shall review the completed application and shall either approve, approve conditionally or disapprove each application. The Watershed Administrator shall take final action within forty-five (45) days of submission of the application. The Watershed Administrator or the Board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:
 - (1) The district highway engineer with regard to proposed streets and highways;
 - (2) The director of the Health Department with regard to proposed private water system or sewer systems normally approved by the Health Department;
 - (3) The state Division of Water Quality with regard to proposed sewer systems normally approved by the Division, engineered storm water controls or storm water management in general.

- (4) Any other agency or official designated by the Watershed Administrator or Watershed Review Board
- d. If the Watershed Administrator approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the Watershed Administrator:

Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds office.

_____ Date _____ Watershed Administrator _____

NOTICE: This property is located within a Public Water Supply Watershed - development restrictions may apply.

- e. If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review
 - f. All subdivision plats shall comply with the requirements for recording of the County Register of Deeds.
 - g. The plat shall be recorded within thirty (30) days of approval. The Subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the Register of Deeds within five (5) working days.
- 3. Subdivision Standards and Required Improvements**
- a. All lots shall provide adequate building space in accordance with the development standards contained in Section 6.6.D, Development Regulations. Lots which are smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with Section 6.6.D.
 - b. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
 - c. Storm Water Drainage Facilities. The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

- d. Erosion and Sedimentation Control. The application shall, where required, be accompanied by a written statement that a Sedimentation and Erosion Control Plan has been submitted to and approved by the local agency administering a Sedimentation and Erosion Control Ordinance approved by the N.C. Division of Land Quality.
- e. Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.

4. Construction Procedures

- a. No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved.
- b. No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this Ordinance until all requirements of this Ordinance have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

5. Penalties for Transferring Lots in Unapproved Subdivisions

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of [county][town], thereafter subdivides his land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this Ordinance and recorded in the office of the register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The City of Salisbury may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this Ordinance.

D. Development Regulations

1. Establishment of Watershed Areas

The purpose of this Section is to list and describe the watershed areas herein adopted.

- 2. For purposes of this Ordinance the City of Salisbury is hereby divided into the following area[s], as appropriate:
 - a. WS-I
 - b. WS-II-CA (Critical Area)
 - c. WS-II-BW (Balance of Watershed)
 - d. WS-III-CA (Critical Area)

- e. WS-III-BW (Balance of Watershed)
- f. WS-IV-CA (Critical Area)
- g. WS-IV-PA (Protected Area)

3. Watershed Areas Described

- a. **WS-I Watershed Areas:** The intent is to provide maximum protection for water supplies within natural and undeveloped watersheds in public ownership by allowing only low intensity uses. No residential or non-residential uses are allowed except those listed below. Impacts from non-point source pollution shall be minimized.

(1) Allowed Uses:

- i) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission.
- ii) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- iii) Water withdrawal, treatment and distribution facilities.
- iv) Restricted road access.
- v) Power transmission lines.

(2) Density and built-upon area limits do not apply.

- b. **WS-II Watershed Areas - Critical Area (WS-II-CA):** In order to maintain a predominately undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of one dwelling unit per two acres. All other residential and non-residential development shall be allowed at a maximum six percent (6%) built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) Allowed Uses:

- i) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.
- ii) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- iii) Residential development.
- iv) Non-residential development, excluding: 1) landfills and 2) sites for land application of residuals or petroleum contaminated soils.

(2) Density and Built upon Areas:

- i) Single Family Residential--development shall not exceed one dwelling unit per two (2) acres on a project by project basis. No residential lot shall be less than two (2) acres [80,000 square feet excluding roadway right-of-way], except within an approved cluster development.
- ii) All Other Residential and Non-Residential--development shall not exceed six percent (6%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

- c. **WS-II Watershed Areas - Balance of Watershed (WS-II-BW):** In order to maintain predominantly undeveloped land use intensity, single family residential uses shall be allowed at a maximum of one dwelling unit per acre (1 du/ac). All other residential and non residential development shall be allowed a maximum of twelve percent built-upon area. In addition, new development may occupy ten percent (10%) of the watershed area which is outside the critical area, with seventy percent (70%) built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this Ordinance. Projects shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed. High density development using engineered stormwater control devices is permitted in this district. Ultimate responsibility for the operation and maintenance of these facilities will rest with the local government.

(1) Allowed Uses:

- i) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- ii) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- iii) Residential development.
- iv) Non-residential development excluding discharging landfills.

(2) Density and Built upon Areas:

- i) Single Family Residential--development shall not exceed one dwelling unit per acre (1 du/ac) on a project by project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

- ii) All Other Residential and Non-Residential--development shall not exceed twelve percent (12%) built-upon area on a project by project basis except that up to ten percent (10%) of the balance of the watershed may be developed at up to seventy percent (70%) built-upon area on a project by project basis. For the purpose calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- d. **WS-III Watershed Areas - Critical Area (WS-III-CA):** In order to maintain low to moderate land use intensity, single family residential uses are allowed at a maximum of one (1) dwelling unit per acre (1 du/ac). All other residential and non-residential development shall be allowed at a maximum of twelve percent (12%) built-upon area. New residuals application sites and landfills are specifically prohibited. High density development using engineered stormwater control devices is permitted in this district. Ultimate responsibility for the operation and maintenance of these facilities will rest with the local government.
 - (1) **Allowed Uses:**
 - i) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.
 - ii) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
 - iii) Residential development.
 - iv) Non-residential development, excluding: 1) landfills and 2) sites for land application of residuals or petroleum contaminated soils.
 - (2) **Density and Built upon Areas:**
 - i) Single Family Residential--development shall not exceed one dwelling unit per acre (1 du/ac) on a project by project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.
 - ii) All Other Residential and Non-Residential--development shall not exceed twelve percent (12%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.
- e. **WS-III Watershed Areas - Balance of Watershed (WS-III-BW):** In order to maintain a low to moderate land use intensity, single family detached uses shall develop at a maximum of two (2) dwelling units per

acre (2 du/ac). All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. In addition, new development and expansions to existing development may occupy ten percent (10%) of the balance of the watershed area with up to seventy percent (70%) built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this Ordinance. Projects shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed. High density development using engineered stormwater control devices is permitted in this district. Ultimate responsibility for the operation and maintenance of these facilities will rest with the local government.

(1) Allowed Uses:

- i) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- ii) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- iii) Residential development.
- iv) Non-residential development excluding discharging landfills.

(2) Density and Built upon Areas:

- i) Single Family Residential--development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way), except within an approved cluster development.
- ii) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis except that up to ten percent (10%) of the balance of the watershed may be developed with new development and expansions to existing development at up to seventy percent (70%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

- f. **WS-IV Watershed Areas - Critical Area (WS-IV-CA):** Only new development activities that require an erosion/sedimentation control plan under State law or approved local program are required to meet the provisions of this Ordinance when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be

allowed at a maximum of twenty-four percent (24%) built-upon area. New residuals application sites and landfills are specifically prohibited. High density development using engineered stormwater control devices is permitted in this district. Ultimate responsibility for the operation and maintenance of these facilities will rest with the local government.

(1) Allowed Uses:

- i) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.
- ii) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- iii) Residential development.
- iv) Non-residential development, excluding: 1) landfills and 2) sites for land application of residuals or petroleum contaminated soils.

(2) Density and Built upon Areas:

- i) Single Family Residential--development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way), except within an approved cluster development.
- ii) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

- g. WS-IV Watershed Areas - Protected Area (WS-IV-PA):** Only new development activities that require an erosion/sedimentation control plan under State law or approved local government program are required to meet the provisions of this Ordinance when located in a WS-IV watershed. In order to accommodate moderate to high land use intensity, single family residential uses shall develop at a maximum of two (2) dwelling units per acre (2 du/ac). All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. A maximum of three (3) dwelling units per acre (3 du/ac) or thirty-six (36%) percent built-upon area is allowed for projects without a curb and gutter street system. High density development using engineered stormwater control devices is permitted in this district. Ultimate responsibility for the operation and maintenance of these facilities will rest with the local government.

(1) Allowed Uses:

- i) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- ii) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- iii) Residential development.
- iv) Non-residential development.

(2) Density and Built upon Areas:

- i) Single Family Residential--development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way), or one-third (1/3) acre for projects without a curb and gutter street system, except within an approved cluster development.
- ii) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For projects without a curb and gutter street system, development shall not exceed thirty-six percent (36%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.
- iii) In addition to the development allowed under paragraphs (a) and (b) above, new development and expansions to existing development may occupy up to ten percent (10%) of the protected area with up to seventy percent (70%) built-upon area on a project by project basis, when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this Ordinance. Projects shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

4. Cluster Development

Cluster development is allowed in all Watershed Areas [except WS-I] under the following conditions:

- a. Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number

of lots allowed for single family detached developments in. Density or built-upon area for the project shall not exceed that allowed for the critical area, balance of watershed or protected area, whichever applies.

- b. All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
- c. Areas of concentrated density development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways.

The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

- d. Cluster developments that meet the applicable low¹ density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

5. Buffer Areas Required

A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

¹ Development that uses the 10/70% provision, as allowed in WS-II and III, is considered “high density development” and thus a 100 foot vegetated buffer is required.

E. Public Health Regulations

1. General Provisions

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare.

2. Abatement

- a. Land use activities shall be monitored within the watershed areas to identify situations that may pose a threat to water quality.
- b. All findings shall be reported to the Watershed Review Board.
- c. Where the Watershed Review Board finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct, or abate the condition and/or violation.

F. High Impervious Cover Option

1. General Requirements

The City Council or TRC may approve high impervious cover proposals consistent with the following standards:

- a. If the proposed area to be developed lies in a designated WS-IV Protected Area watershed, engineered stormwater controls shall be used.
- b. The use of the high impervious cover option for any individual project shall be subject to the review and approval of staff, the TRC, or City Council as required in accordance with the appropriate review procedures outlined in Chapter 17. Final review and approval where deemed appropriate or necessary may be submitted to the N.C. Division of Water Quality for review and recommendation prior to decision by the Board.

2. Stormwater Control Structures

- a. All stormwater control structures shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required. These registered professionals are defined as professional engineers, landscape architects (to the extent that the General Statutes, Chapter 89A allow) and land surveyors (to the extent that the design represents incidental drainage within a subdivision, as provided in General Statutes 89C-3(7)).
- b. Stormwater management systems may consist of one or more treatment option or a combination of treatment options. The design criteria for all such systems are as follows:

- (1) All such systems shall be designed to remove an average of 85% of total suspended solids on an annual basis;
 - (2) The discharge rate following the one inch design storm shall be such that the runoff draws down to the pre-storm design stage within five (5) days, but no less than two (2) days or the post development peak discharge rate shall be equal to the predevelopment rate for the one (1) year, 24 hour storm;
 - (3) Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. If the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute the built-upon area for any other site or area.
 - (4) In addition to the required vegetative filters, all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within thirty (30) days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement. An applicant seeking the high density development option shall enter into a binding Operation and Maintenance Agreement between the City of Salisbury and all interests in the development.
 - (5) A description of the area containing the stormwater control structure(s) shall be prepared and recorded as a separate deed with the Rowan County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the stormwater control structure, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
- c. The Owner shall be responsible for landscaping and grounds management of all said structure(s). The integrity of the structure(s) shall not be threatened or diminished. Easement access to the structure shall also not be disrupted by vegetation.
 - d. The structure(s) shall comply with the Maintenance standards in Section 6.7.N.

G. Administration, Enforcement, and Appeals

1. Watershed Administrator and Duties Thereof

The City of Salisbury shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this Ordinance as follows:

- a. The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.
- b. The Watershed Administrator shall serve as clerk to the Watershed Review Board.
- c. The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Water Quality.
- d. The Watershed Administrator shall keep records of the jurisdiction's use of the provision that a maximum of ten percent (10%) of the non-critical area of WS-II and WS-III watersheds and, for local governments that do not choose to incorporate the high density option, ten percent (10%) of the protected area of WS-IV watersheds may be developed with new development at a maximum of seventy percent (70%) built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use and stormwater management plan (if applicable).
- e. The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the City of Salisbury. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.
- f. The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

2. Appeals from the Watershed Administrator

Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

An appeal from a decision of the Watershed Administrator shall be submitted to the Watershed Review Board within thirty (30) days from the date the order, interpretation, decision or determination is made. All appeals shall be made in writing stating the reasons for appeal. Following submission of an

appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

3. Changes and Amendments to the Watershed Protection Ordinance

- a. The City of Salisbury Governing Board may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.
- b. No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendation has been received from the Watershed Review Board within forty-five (45) days after submission of the proposal to the Chairman of the Watershed Review Board, the City of Salisbury Governing Board may proceed as though a favorable report had been received.
- c. Under no circumstances shall the City of Salisbury Board adopt such amendments, supplements or changes that would cause this Ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments shall be filed with the N.C. Division of Water Quality, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

4. Public Notice and Hearing Required

Before adopting or amending this Ordinance, the City of Salisbury Governing Board shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date for the hearing.

6.7 Phase II Stormwater Ordinance

A. Title

This section and related sections shall officially be known as the “Phase II Stormwater Ordinance.” It is referred to herein as “the Stormwater Ordinance.”

B. Authority

The City of Salisbury is authorized to adopt this Ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; the municipal Charter of the City of Salisbury; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185 [as well as Chapter 113A, Article 4 (Sedimentation Pollution Control)]; [Article 21, Part 6 (Floodway Regulation)]; [Chapter 160A, Article 19 (Planning and Regulation of Development); Chapter 153A, Article 18]; as well as Chapter 153A, Article 18 related to statutory authority for planning and regulation of development (Parts 1, 2, and 3), including particularly but not limited to G.S. 153A-324 (enforcement), G.S. 153A-330 and 331 (subdivision), G.S. 153A-340 (zoning).

C. Findings

It is hereby determined that:

Development and redevelopment alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.

Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt the minimum stormwater controls such as those included in this Ordinance.

Therefore, the City of Salisbury establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

D. Purpose**1. General**

The purpose of this Ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment [as well as illicit discharges into municipal stormwater systems]. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.

2. Specific

This Ordinance seeks to meet its general purpose through the following specific objectives and means:

- a. Establishing decision-making processes for development that protects the integrity of watersheds and preserves the health of water resources;
- b. Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm in order to reduce flooding, stream bank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- c. Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- d. Establishing design and review criteria for the construction, function, and use of structural stormwater BMPs that may be used to meet the minimum post-development stormwater management standards;
- e. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space and other conservation areas to the maximum extent practicable;
- f. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
- g. Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the

inspection of approved projects, and to assure appropriate long-term maintenance.

- h. Coordinating site design plans that include open space and natural areas with the (name of the open space and natural areas protection plan of the local government, or the section of its comprehensive plan dealing with open space/natural areas, if applicable).
- i. Controlling illicit discharges into the municipal separate stormwater system.
- j. Controlling erosion and sedimentation from construction activities.
- k. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention.

E. Definitions

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

"Built-upon area (BUA)" means that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

"Department" means the North Carolina Department of Environment and Natural Resources.

"Design Manual" means the stormwater design manual approved for use in Phase II jurisdictions by the Department for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the Design Manual are to the latest published edition or revision.

"Development" means any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than rebuilding activity that does not qualify as redevelopment.

"Division" means the Division of Water Quality in the Department.

"High-density project" means any project that exceeds the low density threshold for dwelling units per acre and built-upon area.

"Larger common plan of development or sale" means any area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not

limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

"Low-density project" means a project that has no more than two dwelling units per acre or twenty-four percent built-upon area (BUA) for all residential and non-residential development.

"1-year, 24-hour storm" means the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

"Owner" means the legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

"Redevelopment" means any rebuilding activity other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

"Structural BMP" means a physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this Ordinance.

"Substantial progress" means that for the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur:

- (1) obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or
- (2) installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation.

“Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

F. Applicability and Jurisdiction

1. General

Beginning with and subsequent to its effective date, this Ordinance shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection 2 of this Section, Exemptions, below.

2. Exemptions

Development that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this Ordinance.

Redevelopment that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this Ordinance.

Development and redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules. Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this Ordinance.

3. No Development or Redevelopment Until Compliance and Permit

No development or redevelopment shall occur except in compliance with the provisions of this Ordinance or unless exempted. No development for which a permit is required pursuant to this Ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

4. Map

The provisions of this Ordinance shall apply within the areas designated on the map titled "Phase II Stormwater Map of the City of Salisbury, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompany and are hereby made a part of this Ordinance.

The Stormwater Map shall be kept on file by the Administrator and shall be updated to take into account changes in the land area covered by this Ordinance and the geographic location of all structural BMPs permitted under this Ordinance. In the event of a dispute, the applicability of this Ordinance to a particular area of land or BMP shall be determined by reference to the North

Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary Ordinances.

G. Interpretation

1. **Meaning and Intent:** All provisions, terms, phrases, and expressions contained in this Ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the City of Salisbury's code of Ordinances, the meaning and application of the term in this Ordinance shall control for purposes of application of this Ordinance.
2. **Text Controls in Event of Conflict:** In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.
3. **Authority and Interpretation:** The Stormwater Administrator has authority to determine the interpretation of this Ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this Ordinance.

Reference to Statutes, Regulations, and Documents: Whenever reference is made to a resolution, Ordinance, statute, regulation, manual (including the Design Manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

4. **Computation of Time:** The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City of Salisbury, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the City of Salisbury. References to days are calendar days unless otherwise stated.
5. **Delegation of Authority:** Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of City of Salisbury may be carried out by his or her designee.
6. **Usage**
 - a. **Mandatory and Discretionary Terms:** The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.
 - b. **Conjunctions:** Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word "and" indicates that all connected items, conditions, provisions or events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.

- c. **Tense, Plurals, and Gender:** Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

- 7. **Measurement and Computation:** Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

H. Design Manual

1. Reference to Design Manual

The Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater BMPs.

The Design Manual includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

2. Relationship of Design Manual to Other Laws and Regulations

If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

3. Changes to Standards and Specifications

If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this Ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this Ordinance with regard to the application.

I. Relationship to Other Laws, Regulations and Private Agreements

1. Conflict of Laws

This Ordinance is not intended to modify or repeal any other Ordinance, rule, regulation or other provision of law. The requirements of this Ordinance are in addition to the requirements of any other Ordinance, rule, regulation or other provision of law, and where any provision of this Ordinance imposes restrictions different from those imposed by any other Ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

2. Private Agreements

This Ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this Ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this Ordinance shall govern. Nothing in this Ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this Ordinance. In no case shall the City of Salisbury be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

J. Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this Ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this Ordinance.

K. Effective Date and Transitional Provisions

1. Effective Date

This Ordinance shall take effect on _____, 200____.

2. Final Approvals, Complete Applications

All development and redevelopment projects for which complete and full applications were submitted and approved by the City of Salisbury prior to the effective date of this Ordinance shall be exempt from complying with all provisions of this Ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

3. Violations Continue

Any violation of provisions existing on the effective date of this Ordinance shall continue to be a violation under this Ordinance and be subject to penalties and enforcement under this Ordinance unless the use, development, construction, or other activity complies with the provisions of this Ordinance.

L. Administration and Procedures

1. Review and Decision Making Entities

a. Stormwater Administrator:

- (1) Designation:** A Stormwater Administrator shall be designated by the City of Salisbury to administer and enforce this Ordinance.

- (2) **Powers and Duties:** In addition to the powers and duties that may be conferred by other provisions of the City of Salisbury's Code of Ordinances and other laws, the Stormwater Administrator shall have the following powers and duties under this Ordinance:
- i) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this Ordinance.
 - ii) To make determinations and render interpretations of this Ordinance.
 - iii) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the City of Salisbury on applications for development or redevelopment approvals.
 - iv) To enforce the provisions of this Ordinance in accordance with its enforcement provisions.
 - v) To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this Ordinance.
 - vi) To provide expertise and technical assistance to the City of Salisbury upon request.
 - vii) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
 - viii) To take any other action necessary to administer the provisions of this Ordinance.

2. Review Procedures

- a. **Permit Required; Must Apply for Permit:** A stormwater permit is required for all development and redevelopment unless exempt pursuant to this Ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.
- b. **Effect of Permit:** A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this Ordinance, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this Ordinance.

- c. **Authority to File Applications:** All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land owner or the land owner's duly authorized agent.
- d. **Establishment of Application Requirements, Schedule, and Fees:**
 - (1) **Application Contents and Form:** The Stormwater Administrator [Stormwater Advisory Board] shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this Ordinance.
 - (2) **Submission Schedule:** The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications shall be submitted for the purpose of ensuring that there is adequate time to review applications; and that the various stages in the review process are accommodated.
 - (3) **Permit Review Fees:** The City of Salisbury shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.
 - (4) **Administration Manual:** For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this Ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.
- e. **Submittal of Complete Application:** Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this Ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

- f. **Review.** The Stormwater Administrator shall review the application and determine whether the application complies with the standards of this Ordinance.

- (1) **Approval:** If the Stormwater Administrator finds that the application complies with the standards of this Ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this Ordinance. The conditions shall be included as part of the approval.
- (2) **Fails to Comply:** If the Stormwater Administrator finds that the application fails to comply with the standards of this Ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.
- (3) **Revision and Subsequent Review:** A complete revised application shall be reviewed by the Stormwater Administrator [after its re-submittal and shall be approved, approved with conditions or disapproved. If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee. One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this Ordinance.

3. Applications for Approval

- a. **Concept Plan and Consultation Meeting.** Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the City of Salisbury's *Park and Recreation Master Plan*, and other relevant resource protection plans may be consulted in the discussion of the concept plan.

To accomplish this goal the following information should be included in the concept plan, which should be submitted in advance of the meeting:

- (1) **Existing Conditions/Proposed Site Plans:** Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant

vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

- (2) **Natural Resources Inventory:** A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
- (3) **Stormwater Management System Concept Plan:** A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

- b. **Stormwater Management Permit Application.** The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this Ordinance, including Section M, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this Ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator.

- c. **As-Built Plans and Final Approvals.** Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this Ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

- d. **Other Permits.** No certificate of compliance or occupancy shall be issued by the City of Salisbury Zoning Administrator without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Rowan County Building Inspector may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

4. Approvals

- a. **Effect of Approval:** Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- b. **Time Limit/Expiration:** An approved plan shall become null and void if the applicant has failed to make substantial progress on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

5. Appeals

- a. **Right of Appeal:** Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this Ordinance and made by the Stormwater Administrator may file an appeal to the Zoning Board of Adjustment within 30 days.
- b. **Filing of Appeal and Procedures:** Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by City of Salisbury. The Stormwater Administrator shall forthwith transmit to the Zoning Board

of Adjustment all documents constituting the record on which the decision appealed from was taken.

The hearing conducted by the Zoning Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

- c. **Review by Superior Court.** Every decision of the Zoning Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:
 - (1) The decision of the Zoning Board of Adjustment is filed; or.
 - (2) A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Chair of the Zoning Board of Adjustment at the time of its hearing of the case.

M. Standards

1. General Standards

All development and redevelopment to which this Ordinance applies shall comply with the standards of this section.

2. Development Standards for Low-Density Projects

Low-density projects shall comply with each of the following standards:

- a. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- b. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division-approved methodology.
- c. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

3. Development Standards for High-Density Projects

High-density projects shall implement stormwater control measures that comply with each of the following standards:

- a. The measures shall control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-development conditions for, at a minimum, the 1-year, 24-hour storm. Runoff volume draw down time shall be a minimum of 24 hours, but not more than 120 hours.
- b. All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids;
- c. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual;
- d. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division-approved methodology.
- e. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

4. Standards for Stormwater Control Measures

- a. **Evaluation According to Contents of Design Manual:** All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this Ordinance shall be evaluated by the Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Administrator shall determine whether they will be adequate to meet the requirements of this Ordinance.
- b. **Determination of Adequacy; Presumptions and Alternatives:** Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the

Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this Ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this Ordinance. The Administrator may require the applicant to provide such documentation, calculations, and examples as necessary for the Administrator to determine whether such an affirmative showing is made.

5. Dedication of BMPS, Facilities and Improvements

The City of Salisbury may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this Ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

6. Additional Standards for Special Situations

- a. Nutrient Sensitive Waters:** In addition to the standards for stormwater handling set out in the design manual, development and redevelopment that drains in whole or part to class NSW waters shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this Ordinance.

7. Variances

- a.** Any person may petition the City of Salisbury for a variance granting permission to use the person's land in a manner otherwise prohibited by this Ordinance. To qualify for a variance, the petitioner must show all of the following:
 - (1)** Unnecessary hardships would result from strict application of this Ordinance.
 - (2)** The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - (3)** The hardships did not result from actions taken by the petitioner.
 - (4)** The requested variance is consistent with the spirit, purpose, and intent of this Ordinance; will secure public safety and welfare; and will preserve substantial justice.
- b.** The City of Salisbury may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

8. On-Site Wastewater

- a. **Operation and Maintenance Requirement:** New and replaced onsite systems for domestic wastewater installed after the effective date of this Ordinance shall be subject to the same requirements for operation and maintenance as are structural BMPs for stormwater, including, at a minimum, annual inspection reports and a recorded operation and maintenance agreement, pursuant to Section 4 of this Ordinance.
- b. **Standards for Operation and Maintenance:** Onsite systems for domestic wastewater covered by this Ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

N. Maintenance

1. General Standards for Maintenance

- a. **Function of BMPs as Intended:** The owner of each structural BMP installed pursuant to this Ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.
- b. **Annual Maintenance Inspection and Report.** The person responsible for maintenance of any structural BMP installed pursuant to this Ordinance shall submit to the Administrator an inspection report from a qualified registered North Carolina professional engineer, surveyor, or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:
 - (1) The name and address of the land owner;
 - (2) The recorded book and page number of the lot of each structural BMP;
 - (3) A statement that an inspection was made of all structural BMPs;
 - (4) The date the inspection was made;
 - (5) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this Ordinance; and

- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Administrator. An original inspection report shall be provided to the Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

2. Operation and Maintenance Agreement

- a. **In General:** Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this Ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this Ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the City of Salisbury a right of entry in the event that the Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the City of Salisbury to assume responsibility for the structural BMP.

The operation and maintenance agreement shall be approved by the Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Administrator within fourteen (14) days following its recordation.

- b. **Special Requirement for Homeowners' and Other Associations.** For all structural BMPs required pursuant to this Ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
 - (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not

properly maintained, the City of Salisbury, in its sole discretion, may remedy the situation, and in such instances the City of Salisbury shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the City of Salisbury shall first consent to the expenditure.

- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the structural BMPs. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the City of Salisbury depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the City of Salisbury a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
- (6) Allowing the City of Salisbury to recover from the association and its members any and all costs the City of Salisbury expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the City of Salisbury all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Salisbury shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the (name of local government) to maintain or repair any structural BMPs, and the (name of local government) shall not be liable to any person for the condition or operation of structural BMPs.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the City of Salisbury to enforce any of its Ordinances as authorized by law.

- (9) A provision indemnifying and holding harmless the (name of local government) for any costs and injuries arising from or related to the structural BMP, unless the City of Salisbury has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

3. Inspection Program

Inspections and inspection programs by the City of Salisbury may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the owner or occupant of any property refuses to permit such inspection, the Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Administrator while carrying out his or her official duties.

4. Performance Security for Installation and Maintenance

- a. **May Be Required.** The City of Salisbury may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are:

- (1) installed by the permit holder as required by the approved stormwater management plan, and/or
- (2) maintained by the owner as required by the operation and maintenance agreement.

- b. **Amount:**

- (1) **Installation:** The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.
- (2) **Maintenance:** The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long term inflation.

- c. **Uses of Performance Security:**

(1) Forfeiture Provisions

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this Ordinance, approvals issued pursuant to this Ordinance, or an operation and maintenance agreement established pursuant to this Ordinance.

(2) Default

Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the City of Salisbury shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) Costs in Excess of Performance Security

If City of Salisbury takes action upon such failure by the applicant or owner, the City of Salisbury may collect from the applicant or owner for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

(4) Refund

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

5. Notice to Owners

- a. **Deed Recordation and Indications On Plat:** The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable) pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon

final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

- b. Signage:** Where appropriate in the determination of the Stormwater Administrator to assure compliance with this Ordinance, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.
- 6. Records of Installation and Maintenance Activities.** The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.
- 7. Nuisance.** The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a nuisance condition.
- 8. Maintenance Easement.** Every structural BMP installed pursuant to this Ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

O. Enforcement and Violations

1. General

- a. Authority to Enforce:** The provisions of this Ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of City of Salisbury. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of City of Salisbury.
- b. Violation Unlawful:** Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this Ordinance, is unlawful and shall constitute a violation of this Ordinance.
- c. Each Day a Separate Offense:** Each day that a violation continues shall constitute a separate and distinct violation or offense.
- d. Responsible Persons/Entities:** Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this Ordinance shall be subject to

the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this Ordinance, or fails to take appropriate action, so that a violation of this Ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this section, responsible person(s) shall include but not be limited to:

- (1) **Person Maintaining Condition Resulting In or Constituting Violation:** An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this Ordinance, or fails to take appropriate action, so that a violation of this Ordinance results or persists.
- (2) **Responsibility For Land or Use of Land:** The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

2. Remedies and Penalties

The remedies and penalties provided for violations of this Ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

a. Remedies:

- (1) **Withholding of Certificate of Occupancy:** The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (2) **Disapproval of Subsequent Permits and Development Approvals:** As long as a violation of this Ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Salisbury Planning Board may disapprove, any request for permit or development approval or authorization provided for by this Ordinance or the zoning,

subdivision, and/or building regulations, for the land on which the violation occurs.

- (3) **Injunction, Abatements, etc.:** The Stormwater Administrator, with the written authorization of the City Manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this Ordinance. Any person violating this Ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
 - (4) **Correction as Public Health Nuisance, Costs as Lien, etc.:** If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the City Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
 - (5) **Stop Work Order:** The Stormwater Administrator may issue a stop work order to the person(s) violating this Ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.
- b. **Civil Penalties:** Violation of this Ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which The City of Salisbury is subject for violations of its Phase II Stormwater permit.
 - c. **Criminal Penalties:** Violation of this Ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

3. Procedures

- a. **Initiation/Complaint:** Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.
- b. **Inspection:** The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land,

building, structure, or premises to ensure compliance with this Ordinance.

- c. **Notice of Violation and Order to Correct:** When the Stormwater Administrator finds that any building, structure, or land is in violation of this Ordinance, the Stormwater Administrator shall notify, in writing, the property owner or other person violating this Ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the Code Enforcement Officer, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this Ordinance to correct and abate the violation and to ensure compliance with this Ordinance.

- d. **Extension of Time:** A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Stormwater Administrator may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this Ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.
- e. **Enforcement after Time to Correct:** After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this Ordinance.

- f. **Emergency Enforcement:** If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this section.

P. Illicit Discharges and Connections

1. Illicit Discharges

- a. No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:
- (1) Water line flushing;
 - (2) Landscape irrigation;
 - (3) Diverted stream flows;
 - (4) Rising ground waters;
 - (5) Uncontaminated ground water infiltration
 - (6) Uncontaminated pumped ground water;
 - (7) Discharges from potable water sources;
 - (8) Foundation drains;
 - (9) Air conditioning condensation;
 - (10) Irrigation water;
 - (11) Springs;
 - (12) Water from crawl space pumps;
 - (13) Footing drains;
 - (14) Lawn watering;
 - (15) Residential and charity car washing;

- (16) Flows from riparian habitats and wetlands;
- (17) Dechlorinated swimming pool discharges;
- (18) Street wash water;
- (19) Flows from emergency fire fighting; and
- (20) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the City of Salisbury.

- b. Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

2. Illicit Connections

- a. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section 6.7.P.1 above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
- b. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other Ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this Ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
- c. **Where it is determined that said connection:**
 - (1) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
 - (2) Was made in violation of any applicable regulation or Ordinance, other than this section; the Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Administrator shall take into consideration:

- (i) The quantity and complexity of the work,
- (ii) The consequences of delay,
- (iii) The potential harm to the environment, to the public health, and to public and private property, and
- (iv) The cost of remedying the damage.

3. Spills

Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Risk Management Officer of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

4. Nuisance

Illicit discharges and illicit connections which exist within the city limits or ETJ are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in Chapter 14 of the Salisbury City Code.

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